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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

X

ANALYTICAL SURVEYS, INC.,

Plaintiff,

-against-

TONGA PARTNERS, L.P., CANNELL CAPITAL,  
L.L.C., and J. CARLO CANNELL,  
Defendants.

X

06 CIVIL 2692 (KMW)(RLE)

AMENDED JUDGMENT

#090129  
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Whereas on September 26, 2008, the Court having issued its Opinion and Order finding Defendant Tonga Partners, L.P. ("Tonga") liable for \$4,965,898.95 in short-swing profits, and Defendants Cannell Capital LLC ("Cannell Capital") and J. Carlo Cannell ("Cannell") jointly and severally liable for their respective pecuniary interests in Tonga's short-swing profits; on November 19, 2008, the Court having endorsed a Stipulation of Settlement that (1) Plaintiff withdraws its claim for the disgorgement of short-swing profits that Cannell Capital and Cannell were alleged to have realized as a consequence of the performance-related fees (i.e., incentive fees) earned by Cannell Capital as the investment manager of Tonga from the short-swing transactions at issue, and (2) Plaintiff and Defendants agree that Cannell Capital's pecuniary interest in Tonga's short swing profits equals \$553,896.37, and Mr. Cannell's pecuniary interest in Tonga's short swing profits equals \$553,342.47, and the above-captioned action having come before this Court, and the matter having come before the Honorable Kimba M. Wood, United States District Judge, and the Court, on November 26, 2008, having rendered its Order directing the Clerk of the Court to enter judgment in the above-captioned case in favor of plaintiff against Defendant in accordance with the Court's Opinion and Order September 26, 2008 and the terms set forth in the joint stipulation dated

November 19, 2008, it is,

**ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Order dated November 26, 2008, Defendant Tonga liable for \$4,965,898.95 in short-swing profits; Plaintiff withdraws its claim for the disgorgement of short-swing profits that Cannell Capital and Cannell were alleged to have realized as a consequence of the performance-related fees (i.e., incentive fees) earned by Cannell Capital as the investment manager of Tonga from the short-swing transactions at issue; and Plaintiff and Defendants agree that Cannell Capital's pecuniary interest in Tonga's short swing profits equals \$553,896.37, and Mr. Cannell's pecuniary interest in Tonga's short swing profits equals \$553,342.47; accordingly, the case is closed and any pending motions are moot.

**Dated:** New York, New York  
January 27, 2009

**J. MICHAEL McMAHON**

**BY:**  


**Clerk of Court**

**Deputy Clerk**

**THIS DOCUMENT WAS ENTERED  
ON THE DOCKET ON \_\_\_\_\_**